IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.11.2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.15983 of 1997

Mr.O.Ulaganathan. .. Petitioner
Vs.
The Revenue Divisional Officer,
Gopichetty Palayam,
Erode District. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For Petitioner: : Mr.K.Ramakrishna Reddy
For Respondent: : Mr.R.Chandrasekaran,
Govt.Advocate.

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O R D E R

The above Writ Petition has been filed by the petitioner praying to issue a Writ of Certiorari to call for the records of the respondent in ROC.No.17803/96/A5, dated 26.9.1997 and quash the same.

2. The case of the pe1titioner is that an extent of 4.64 acres comprised in S.No.1023/3 in Burgur Village was assigned by the Tahsildar, Bhavani in favour of one Bandha Gowda, on certain conditions such as that the lands in question should not be alienated, gifted, sold or mortgaged or in any way encumbered within a period of ten years and that after the said period of ten years, they should not be transferred in favour of a person not belonging to the backward class; that the said Bandha Gowda, was in possession and enjoyment of the said lands for the full period of ten years cultivating the said land; that the petitioner purchased the above said lands from Bandha Gowda by a registered sale deed dated 12.12.1979 fully satisfying the above said conditions of the original grant made by the Special Tahsildar i.e. after the expiry of ten years from the date of the assignment

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and that the petitioner also belongs to a Backward Class (Devanga Chettiar).

3. The further case of the petitioner is that pursuant to the above said sale deed, he has been in possession and enjoyment of the said lands and is cultivating the same; that by effecting mutation of records by removing the name of Bandha Gowda patta was also issued in favour of the petitioner; that since, the substantial part of the lands in question being Rocky Area, and that after necessary analysis by experts, it was found that the above said area is having black granite deposits, it was not possible for cultivation; that the petitioner approached the Mines Department and applied for quarrying lease to quarry black granite and the said application was granted pursuant to which a lease deed was also duly executed and registered before the District Collector, Erode for doing quarrying operations for a period of 3 years from 28.5.1984 to 27.5.1987; that the said lease was renewed for a further period of 3 years from 28.5.1987 to 27.5.1990 and accordingly the lease deeds have also been executed; that there was a further extension of the lease for six months from 27.5.1990 by the District Collector as per his reference dated 6.4.1990.

4. The further case of the petitioner is that since the renewal application for the subsequent period was kept pending and not disposed of, he filed W.P.No.4071 of 1991 seeking appropriate relief to enable him to continue the quarry operations in the said patta land; that this Court by the order dated 24.4.1991 granted an interim injunction restraining the authorities from interfering with the said quarrying operation and the said writ petition is still pending.

5. The further case of the petitioner is that the Government by G.O.Ms.No.2485 Revenue Dept. Dated 9.11.1979 has passed an order to the effect that any assignee wishing to dispose of the land should get the prior permission of the Tahsildar or the R.D.O., who should give permission only if the sale is to one of the categories eligible for assignment of Government waste lands for cultivation purpose; that by a notice dated 8.1.1988 stating that since prior permission for the sale of the lands in favour of the petitioner was not obtained pursuant to the said Government Order, called upon the petitioner to show cause as to why the said assignment of lands should not be cancelled and resumed; that the petitioner sent his explanation dated 9.2.1988 denying the said charges made in the said notice and requesting to drop all further action in the matter; that however, the respondent at the instance of the D.R.O. served notice dated 29.12.1996 proposing to hold an enquiry on 6.1.1997 with regard to the sale of the lands in question even before the cancellation of the conditions of the assignment and requiring him to be present

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on that date in this behalf; that he appeared before the respondent for the said enquiry through his auditor and submitted that the lands purchased by him was only on the expiry of the period of ten years and that he also belongs to the backward community entitled to purchase the said assigned lands; that despite the aforesaid specific and categoric submissions made before the respondent herein at the oral enquiry, the respondent has passed the impugned order cancelling the original assignment of land in question in favour of the said Banda Gowda holding that inasmuch as the said sale in favour of the petitioner was within a month after the said G.O. dated 9.11.1979, prior permission of sale was not obtained and that he had quarried for a depth of 12 metres thereby making the land unfit for cultivation and depriving the object of the assignment to poor people to carry on agricultural work defeating the object of the assignment. On such averments, he would pray for
the relief extracted supra.

6. In the counter affidavit filed by the respondent besides generally denying the allegations in the petition, he would further submit that as per G.O.No.2485 dated 8.11.1979 the assigned land should be disposed of only after ten years with prior permission of the Tahsildar or Revenue Divisional Officer; that in this case the assignee subsequently sold the land to the petitioner by a registered sale deed dated 13.12.1979 without obtaining permission from the concerned, thus a gross violation of the above Government Order; that further the petitioner who purchased the land has not utilised the land for agricultural purpose, instead he applied for quarrying lease to quarry black granite and executed a lease deed and obtained permission to carry out quarrying in the above land till 27.5.1990; that he has not obtained further extension to carry out quarrying operation in the above purchased land.

7. The respondent would further submit that as per condition No.8 if the assigned land contains any mines, that land should be vested with the Government; that since the purchaser has not obtained any permission from the concerned authority as per G.O. dated 9.11.1979 in spite of the lapse of ten years as stated in condition No.7 of the patta, it is violation of the conditions laid down in Nos. 7 and 8 of the patta and also violation of condition prescribed in the above G.O.; that therefore, the Government is entitled to resume the land if there are any violation of the above conditions; that hence, the respondent issued notice to the petitioner and the assignee to appear for an enquiry on 3.2.1987 before the respondent; that the assignee viz., Bandha Gowda has not turned up for enquiry on the appointed date, the petitioner has deputed his agent for enquiry; that since the contentions raised on behalf of the petitioner are not valid, the

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respondent came to the conclusion that the assigned land has to be resumed for violation of the above conditions and passed resumption orders; that though the petitioner was granted to carry out quarrying operations in the above land, the petitioner has no legal right over its title deed since the condition No.7 of the D.Namuna clearly states that the Government has right to resume the land; that since the land is now vested with the Government allowing the petitioner further for quarrying will render huge loss of revenue to the State Exchequer.

8. The respondent would further submit that it is not true that the licence issued to the petitioner has been renewed from time to time; that the licence was renewed for 6 months from 27.5.1990, no further extension was obtained by the petitioner; that the mining operations were carried out in the said land only by virtue of the interim stay granted by this Court in W.P.No.4071 of 1991, dated 24.4.1991. On such averments, he would pray for dismissal of the above writ petition.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the respondents authority, this Court is able to assess that the land in question was originally a Government poramboke land and the same had been assigned in favour of one Bandha Gowda on certain conditions such as prohibiting the assignee from alienating or encumbering the property for ten years and even thereafter if at all, it can be transferred only in favour of a person belonging to the backward class etc. The property is lying in S.No.1023/3 of Burgur Village in an extent of 4.64 acres and the petitioner is alleged to have purchased the property on 12.12.1979.

10. Coming to the impugned order passed by the respondent, the Revenue Divisional Officer, Gobichettypalayam, it is an order cancelling the assignment made in favour of Bandha Gowda as per the order of the Tahsildar made in T.R.No.628/79 dated 31.10.1969 and one of the conditions imposed therein was that even after the stipulated period of ten years immediately after the assignment if the assignee wanted to dispose of the land assigned in favour of anyone else he could do so only on application made to the Government and after obtaining the permission from the Government for such alienation in favour of a third party or anyone else for the matter, particularly as insisted in the Government Order made in G.O.Ms.No.2485 Revenue Department dated 9.11.1979 and since this condition imposed by the Government is violated by the assignee while selling the land in favour of the petitioner, the said assignment has been cancelled by the respondent as per its impugned order made in Roc.No.17803/96/A5 dated 26.9.1997 and it

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is this order passed by the respondent which is under challenge in the above writ petition.

11. Even though on the part of the petitioner he has come forward to highlight the compliance of the other conditions on the part of the assignee Bandha Gowda prior to the sale of the land in favour of the petitioner, still, nothing is assigned for the breach of this mandatory condition that even after compliance of the condition of ten years, if the land is to be assigned in favour of anyone else, prior permission from the Government should be obtained for making such assignment. Since this condition being mandatory, without obtaining the said permission from the Government having sold the land in favour of the petitioner, neither the sale deed executed by the assignee in favour of the petitioner is legally a valid transaction nor consequent to that anything done in the property in question under the pretext of the said transaction on the part of the petitioner could be held valid in law.

12. Against this argument no proper or tangible reason has been assigned on the part of the petitioner. But on the contrary, on the part of the respondent it would be argued that the Government by G.O.Ms.No.2485, Revenue Department, dated 9.11.1979 has passed an order to the effect that the assignee wishing to dispose of the land should get the prior permission of the Revenue authorities and only on grant of such permission for the sale is carried out it would be a valid sale and that too it could be sold only for the purpose of cultivation and not otherwise and therefore, by notice dated 8.1.1988 the assignee was called upon to show cause as to why the said assignment of lands should not be cancelled but only the petitioner sent of his explanation on 9.2.1988 requesting to drop further action on untenable grounds and thus holding an enquiry on 6.1.1997 on further notice dated 29.12.1996 and since the assignee who has to obtain such permission prior to sale of the property did not turn up, but the petitioner only sent his representative and therefore, adopting such procedures established under law by the impugned order the respondent has cancelled the assignment in accordance with law for breach of condition and therefore, would pray to dismiss the above writ petition as devoid of merits.

13. In matters of such nature wherein Government properties are assigned in favour of anyone since the same is done towards implementation of the policy of the Government particularly to uplift the status of those backward classes, unless the conditions imposed therein are strictly observed, the very purpose of effecting such assignment would get defeated, ultimately the expectations of law without being satisfied and therefore, the authorities concerned such as the respondent Revenue Divisional

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Officer in this case are expected to be very prompt and strict in imposing the conditions of assignment and as such the respondent authority has acted promptly in giving effect to the Government Order by the G.O.Ms.No.2485 dated 9.11.1979 and has rightly cancelled the assignment granted in favour of the original assignee Bandha Gowda, further making it known that the Government Order had come into force on 9.11.1979 and subsequently since the sale had been executed in favour of the petitioner on 12.12.1979, it is a gross violation of the Government Order which cannot be justified in any manner.

14. It would further be argued on the part of the respondent that even in the event of proper sale the property could only be made use of for the purpose of agriculture, cultivating different crops on it and not for using the same for commercial purpose such as excavating black granite etc., as it is admittedly argued on the part of the petitioner and since this being a second violation of the conditions imposed, even at this score the act of the respondent in cancelling the assignment and nullifying the same is fully justified and valid and therefore, the Government in resuming the title from the assignee is absolutely right and within the legal parameters and therefore, the interference of this Court sought to be made into the well considered and merited order passed by the respondent in resuming the title of the land in favour of the Government is neither necessary nor warranted in the circumstance of the case and hence the following order:

In result,

(i) the above writ petition does not merit acceptance but miserably fails and the same is dismissed as such;

(ii) the impugned order dated 26.9.1997 made in Roc.No.17803/96/A5 by the respondent Revenue Divisional Officer is confirmed;

(iii) however, in the circumstance of the case, there shall be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To
The Revenue Divisional Officer,
Gopichetty Palayam,
Erode District.

1 cc to The Government Pleader , High Court, Madras. SR. 51297
1 cc to Mr. K. Ramakrishna Reddy, Advocate, SR. 50674

ORDER IN
W.P.NO.15983 of 1997.

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